IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.965 OF 2005
WITH
CIVIL APPLICATION NO. 1135 OF 2005

Abdul Aziz Dadamiya. ...Appellant.

Vs.

Dr.Ms. Kesar Shamji Kenia & Ors. ...Respondents.

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Mr. S.A. Sawant for the Appellant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 19, 2005.

P.C.:

The relief which has been granted by the Learned Trial Judge in the Notice of Motion, in terms of prayer clause (a) of the Motion reads as follows :

> "a) That pending the hearing and disposal of this Motion, this Hon'ble Court be pleased to restrain the Defendants No.1 to 4, their servants, agents representatives and/or persons or persons claiming through them from in any manner obstructing the repairing work, i.e. The replacement of the C.I. Sheets on the roof of the suit premises viz., Shop No.E-24,

Ground Floor, 82, Abdul Latif Dadamiya Chawl, Opp. Bhabha Hospital, Kurla (West), Mumbai-400 070."

The Trial Judge has noted that the First Respondent is a Doctor whose dispensary is situated in tenanted premises constituting the suit premises. The roof is dilapidated and consequently the only permission which has been granted is for carrying out tenanted repairs by the replacement of G.I Sheets on the roof.

Counsel appearing on behalf of the Appellant submitted that in the guise of the relief which has been granted in the Motion, the First Respondent may carry out additional repair work by increasing the height and dimension of the premises. Clearly the order of the Learned Trial Judge does not warrant any such apprehension since the nature of the relief which has been granted is specifically confined to the replacement of G. I. Sheets on the roof of the suit premises. In the event that any unauthorised work is carried out, it would always be open to the Municipal Corporation to take action in accordance with law. The appeal is accordingly disposed of.

In view of the disposal of the appeal, the Civil Application is rendered infructuous and is accordingly disposed of.

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